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SERVICE DATE – FEBRUARY 11, 2016

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42144

NORTH AMERICA FREIGHT CAR ASSOCIATION; AMERICAN FUEL &  
PETROCHEMICALS MANUFACTURERS; THE CHLORINE INSTITUTE;  
THE FERTILIZER INSTITUTE; AMERICAN CHEMISTRY COUNCIL;  
ETHANOL PRODUCTS, LLC D/B/A POET ETHANOL PRODUCTS;  
POET NUTRITION, INC.; AND CARGILL INCORPORATED

v.

UNION PACIFIC RAILROAD COMPANY

Decided: February 10, 2016

On June 2, 2015, North America Freight Car Association, American Fuel & Petrochemicals Manufacturers, The Chlorine Institute, Inc., The Fertilizer Institute, and American Chemistry Council, along with Ethanol Products, LLC d/b/a POET Ethanol Products, POET Nutrition, Inc., and Cargill Incorporated (Complainants), filed an amended complaint against Union Pacific Railroad Company (UP) pursuant to 49 U.S.C. §§ 10702, 11101, 11121, 11122, 11701, and 11704, and 49 C.F.R. pt. 1111. In Count I, Complainants challenge the reasonableness of UP Tariff 6004, Item 55-C (Item 55-C), which became effective on January 1, 2015. In Count II, Complainants allege that UP's refusal to compensate Complainants for the use of their tanks cars, whether through mileage allowances or reduced line haul rates, constitutes an unreasonable practice under 49 U.S.C. § 10702 and violates 49 U.S.C. §§ 11101, 11121, and 11122. On June 22, 2015, UP filed its answer to the amended complaint.

The Board has signed a Memorandum of Understanding with the Federal Energy Regulatory Commission (FERC) to employ the services of FERC administrative law judges (ALJs) on a case-by-case basis to perform discrete, Board-assigned functions such as adjudicating discovery disputes between parties in cases pending before the Board. The Board hereby assigns and authorizes Administrative Law Judge John P. Dring to entertain and rule upon discovery matters and to resolve all disputes concerning discovery in this proceeding. The parties are directed to send copies of all their filings and documents in this proceeding to Judge Dring at the Federal Energy Regulatory Commission, Office of Administrative Law Judges, 888 First Street, N.E., Washington, DC 20426.

It is ordered:

1. This proceeding is assigned to Administrative Law Judge John P. Dring for the handling of all discovery matters and initial resolution of all discovery disputes.
2. Each party in this proceeding must send a copy of its filings to Judge Dring at the Federal Energy Regulatory Commission, Office of Administrative Law Judges, 888 First Street, N.E., Washington, DC 20426.
3. Judge Dring will be added to the service list in this proceeding and a copy of this decision will be served upon him.
4. A copy of this decision will be served on the United States Office of Personnel Management (OPM), at Human Resource Solutions, ALJ Program Office, 1900 E Street N.W., Room 2458, Washington, DC 20414-9400. Judge Dring shall send a copy of the notice or order that constitutes the final disposition of his assignment of this case to OPM at the above address.
5. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.